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Supreme Court, U.S.
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CASE NO. 95-1268

IN THE SUPREME COURT OF THE UNITED STATES
October Term 1995

STATE OF MARYLAND,
Petitioner,
vs.
JERRY LEE WILSON
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE MARYLAND COURT OF SPECIAL APPEALS

BRIEF OF AMICI CURIAE STATES OF OHIO, ALABAMA, ARIZONA, CALIFORNIA, CONNECTICUT, DELAWARE, HAWAII, IOWA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MONTANA, NEVADA, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OKLAHOMA, PENNSYLVANIA, PUERTO RICO, SOUTH DAKOTA, UTAH, VERMONT AND VIRGIN ISLANDS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHEN A POLICE OFFICER MAKES A ROUTINE TRAFFIC STOP, DOES THE AUTOMATIC RIGHT TO ORDER THE DRIVER TO EXIT THE VEHICLE AS SET FORTH IN *PENNSYLVANIA V. MIMMS*, 434 U.S. 106 (1977), ALSO EXTEND TO PASSENGERS IN THE STOPPED VEHICLE.

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STATEMENT OF AMICUS INTEREST

This case presents an exceedingly important federal question, one that has sharply divided the lower courts since 1977. In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the Court held that police officers may order the driver of a vehicle to exit the car during a traffic stop. The question presented here, which was not directly resolved in *Mimms* and which has divided the lower courts ever since, is whether the officer's authority to require the driver to exit the car extends to passengers in the vehicle.

In its decision below, the Maryland Court of Appeals held that *Mimms* did not extend to this setting; it instead forced the officer to establish "heightened caution" before requiring passengers to exit the car. In doing so, the court ignored the teachings of this Court since *Mimms*, devalued the State's interest in protecting its law enforcement officers, overstated the liberty interests of passengers in a properly-stopped vehicle, and sharpened a lower court conflict on this issue.

Like Maryland, the Amici States are entrusted with the enforcement of highway safety violations. In meeting this responsibility, Amici States are broadly concerned with judicial decisions that make the already-dangerous job of law enforcement still more dangerous, particularly with respect to the often perilous context of traffic stops.[1] Accordingly, because this case involves a critical federal question to the

[1] Ohio State Highway Patrol records indicate that in 1995 alone, there were 51 officer assaults and 308 incidents of resisting arrest. With few exceptions, each of these cases evolved from trooper contact with criminal activity through traffic-related encounters.

States and because it concerns an issue on which lower state and federal courts are deeply divided, the 27 Amici States join together in asking the Court to review and reverse the Maryland Court of Special Appeals' decision.

STATEMENT OF THE CASE

Amici curiae adopt the Petitioner's statement of the case.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO ESTABLISH THAT, JUST AS LAW ENFORCEMENT OFFICERS MAY ORDER DRIVERS OF LAWFULLY STOPPED VEHICLES TO EXIT THE VEHICLE UNDER *PENNSYLVANIA v. MIMMS*, 434 U.S. 106 (1977), SO TOO MAY THEY ORDER PASSENGERS OF THOSE VEHICLES TO DO THE SAME.

A. Introduction.

The key problem with the lower court's decision is that it undervalues the empirically-established dangers that police officers face from the passengers of properly-stopped vehicles and overvalues the extent of the liberty intrusion that exit orders impose on the occupants of those vehicles. The decision also is directly at odds with decisions from the overwhelming majority of state and federal courts, and ignores the underlying teachings of *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) and its progeny. The decision should be reviewed -- and reversed.

B. The State's Interest In Protecting Law Enforcement Officers From Potentially Dangerous Vehicle Occupants Outweighs The *De Minimus* Intrusion On The Personal Liberty Of Passengers Who Are Ordered To Exit A Lawfully Stopped Vehicle.

Pennsylvania v. Mimms, 434 U.S. 106 (1977) held that a police officer may order the driver of a vehicle to exit the car during a legitimate traffic stop. In balancing the officer's legitimate safety concerns against the driver's liberty interests, the Court made two observations. On the one hand:

> Establishing a face-to-face confrontation diminishes the possibility, otherwise substantial, that the driver can make unobserved movements; this, in turn, reduces the likelihood that the officer will be the victim of an assault.
>
> We think it too plain for argument that the State's proffered justification-the safety of the officer-is both legitimate and weighty.

Id. at 111. On the other hand, the intrusion on the driver's liberty "hardly rises to the level of a 'petty indignity.'" *Id.*

The balance struck in *Mimms* thus turned largely on the dangers to law enforcement officers presented by such encounters. Those dangers are well documented. As this Court has repeatedly recognized, traffic stops result in a high percentage of officer fatalities. *See, e.g., Adams v. Williams*, 407 U.S. 143, 148 n.3 (1972)(study showed that approximately 30 per cent of police shootings occurred when a police officer approached an automobile); *accord, Mimms*,

434 U.S. at 110; Bristow, *Police Officer Shootings--A Tactical Evaluation*, 54 J.Crim.L.C. & P.S. 93 (1963). It thus is beyond dispute "that a significant percentage of murders of police officers occurs when the officers are making traffic stops." *United States v. Robinson*, 414 U.S. 218, 234 n.5 (1973).

Regrettably, in the two decades since *Mimms* was decided, the number of assaults upon police officers has continued to grow. FBI statistics show that between 1988 and 1993, the number of those assaults rose by 13%, and in 1993 the number of police officers murdered in the line of duty jumped by over 11%. Federal Bureau of Investigation, *Uniform Crime Reports: Law Enforcement Killed and Assaulted* (1993). Notably, one in seven of these murders occurred in connection with a traffic stop.[2] The decision below simply failed to account for these strong state interests, interests that parallel many of this Court's same concerns in *Mimms*.

At bottom, the Maryland Court of Special Appeals made three mistakes. First, the court failed to perceive the increased danger of stopping a vehicle containing multiple occupants, as opposed to a vehicle containing merely a driver. Indeed, in the lower court's view, the need to protect an officer from a passenger was "just as great" as the need to protect him from a driver. The essential fact of the matter is this: an officer who stops a crowded car faces far

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[2] Even reported decisions confirm the dangers that law enforcement personnel face from drivers *and* passengers during traffic stops. *See, e.g., Hester v. State*, 544 S.W.2d 129 (1976) (driver and passenger opened fire on police officers during a routine traffic stop, killing two officers).

more peril than one who stops a car with only a driver. Society's heightened need to provide protection to the officer in this distinct setting should correspond to the increased risk. The lower court's contrary conclusion was mistaken.

Second, the lower court exaggerated the liberty interest of the passengers. Contrary to the lower court's conclusion, the passenger of a vehicle lawfully stopped by a police officer is faced with essentially the same personal liberty intrusion as the driver. Both individuals are temporarily prohibited from continuing to their immediate destination. And both individuals face an equally *de minimus* liberty intrusion by being ordered to exit the vehicle. As with the driver, the passenger of a lawfully stopped vehicle simply cannot proceed. The only real question is whether the passenger is going to spend the stop sitting in the car or standing alongside it. *Mimms, 434 U.S.* at 111. Of course, even if the passenger does not wish to wait out the stop, the passenger still has to exit the vehicle in order to leave.

Thus, what was true in *Mimms* is just as true here:

> not only is the insistence of the police on the latter choice not a "serious intrusion upon the sanctity of the person," but it hardly rises to the level of a "'petty indignity.'"

Id. In the end, the decision below puts the officer in a no-win situation: the officer either can order the driver to exit the vehicle (which prevents the officer from keeping an eye on the passengers) or can allow the driver and passengers to stay in the car (which prevents the officer from realizing the benefits of *Mimms*).

Third, the "heightened caution" standard that the court erected is neither workable nor sufficient to protect the

officer's safety. The new standard is not workable because there is no principled way to assure that it will have predictable meaning to officers, judges and citizens alike. The standard does not protect officers because by the time officers perceive *additional* danger signals (beyond those normally attendant to traffic stops), it may be too late to protect themselves.

C. This Court Should Resolve A Deep Conflict Among the Lower Courts On This Important Federal Question.

Whether one agrees or not with the Amici States' assessment of the Maryland Court of Special Appeals' decision, it is beyond cavil that this case raises an important issue of federal law that has deeply divided the lower courts. In addition to Maryland, three other states have held that the *Mimms* rule does not extend to passengers. Much like Maryland, for example, New Jersey and Iowa have held that a police officer must have some sense of "heightened caution" before requiring the passenger of a lawfully stopped vehicle to exit the car. *See State v. Becker,* 458 N.W.2d 604 (Iowa 1990); *State v. Smith,* 637 A.2d 158 (N.J. 1994). On slightly different grounds, in *People v. Maxwell,* 254 Cal. Rptr. 124 (Cal. Ct. App. 1988), the court held that police officers could not order a passenger to exit a car absent some suspicion concerning the passenger. In doing so, the court found that the officer could only order a passenger to exit a lawfully stopped vehicle if there was an "inchoate and unparticularized suspicion that it would be better for the officer's safety[.]" *Id. at 127 (citing People v. Beal,* 118 Cal. Rptr. 272 (Cal. Ct. App. 1974)).

The vast majority of states, however, have reached a different conclusion, holding that *Mimms* permits police officers to require drivers *and* passengers to exit a properly

stopped vehicle. Rhode Island, for example, has relied upon post-*Mimms* decisions of this Court, see *Rakas v. Illinois*, 439 U.S. 128 (1978) and *Michigan v. Long*, 463 U.S. 1032 (1983), to extend *Mimms* to all occupants of vehicles stopped for valid reasons. *See State v. Soares*, 648 A.2d 804, 806 (R.I. 1994). At least seven other state courts have done the same. *See Doctor v. State*, 573 So.2d 157 (Fla. 1991), *rev'd in part on other grounds*, 596 So.2d 442 (Fla. 1992); *State v. Landry*, 588 So. 2d 345 (La. 1991); *People v. Martinez*, 466 N.W.2d 380 (Mich. Ct. App. 1991), *vacated on other grounds*, 483 N.W.2d 868 (Mich. 1992); *State v. Ferrise*, 269 N.W. 2d 888 (Minn. 1978); *People v. Robinson*, 543 N.E.2d 733 (N.Y.), *cert. denied*, 493 U.S. 966 (1989); *State v. Gilberts*, 497 N.W.2d 93 (N.D. 1993); *Commonwealth v. Brown*, 654 A.2d 1096 (Pa.), *appeal denied*, 664 A.2d 972 (Pa. 1995). *See also*, *State v. Webster*, 824 P.2d 768 (Ariz. 1991); *People v. Melgosa*, 753 P.2d 221 (Colo. 1988); *People v. Salvator*, 602 N.E.2d 953 (Ill. App. Ct. 1992), *appeal denied*, 610 N.E.2d 1273 (Ill. 1993); *Warr v. State*, 580 N.E.2d 265 (Ind. Ct. App. 1991); *State v. Williams*, 641 N.E.2d 239 (Ohio Ct. App.), *dismissed and mot. overruled*, 639 N.E.2d 114 (Ohio 1994). In addition, one federal circuit court, *see Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323 (9th Cir. 1995), and one district court have extended *Mimms* to passengers, *see United States v. McCoy*, 824 F.Supp. 467 (D. Del. 1993).

In short, there is a significant -- and now deepening -- split among the state and federal courts on this issue. The Court should resolve the conflict.

CONCLUSION

The 27 Amici States respectfully request the Court to grant certiorari in this case.

Respectfully Submitted,

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